IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition 11010 of 2005

Date of decision: 3.8.2006

Harnandan Singh …Petitioner

Versus

State of Punjab and others …Respondents

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CWP 11035 of 2005

Davinder Pal and anr …Petitioners

Versus

State of Punjab and others ….Respondents.

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CORAM: HON'BLE MR JUSTICE S.S.NIJJAR.
HON'BLE MR JUSTICE S.S.SARON.

Present: Mr SS Japra, Advocate for the petitioners.
Mrs Charu Tuli, Sr DAG Punjab, for the respondents.

S.S. SARON, J.

This order will dispose of above mentioned two writ petitions as they involve identical questions of law and facts.

Mrs Charu Tuli, Sr DAG Punjab has placed on record photocopies of the gift deed dated 6.3.1997 executed between the Punjab Government and the Bharat High School, Tuto Majra, District Hoshiarpur and the gift deed dated 10.8.2000 executed between the Punjab Government and Sant Hari Singh Khalsa Senior Secondary School, Jian Chabbewal, District Hoshiarpur (SHS Khalsa School – for short).

The same are taken on record.

CWP 11010 of 2005

Petitioner – Harnandan Singh was appointed as Master on 25.2.1972 at Bharat High School, Tuto Majra, District Hoshiarpur. The said school before being taken over by the government in pursuance of gift deed dated 6.3.1997 was a government aided school receiving grant-in-aid from the Punjab Government. He was promoted as Headmaster vide letter dated 12.3.1992 w.e.f. 1.10.1991. He has been continuously depositing his provident fund. Since pension has not been granted for the service rendered by him in the government aided institution, he has approached this Court seeking a writ in the nature of mandamus directing the respondents to release the pension and other benefits which are due to him by including the service rendered by him in the aforesaid privately managed aided school.

CWP 11035 of 2005

Petitioners – Davinder Pal and Manmohan Kaur seek quashing of the orders Annexures P10 and P11. In terms of the order (Annexure P10), the pension papers of Davinder Pal/Smt Davinder Kaur – petitioner No.1 have been returned with the remarks that her regular government service is less than 10 years and she is not entitled for pension. In terms of order Annexure P11, the pension papers of Smt Manmohan Kaur – petitioner No.2 have been returned with the remarks that the service rendered in private school by the retiree is not countable towards qualifying service for the pensionary benefits. Davinder Pal – petitioner No.1 was appointed as Hindi teacher at Bharat High School, Tuto Majra on 13.5.1974. The said school as already noticed, is an aided institution receiving grant-in-aid before it was taken over by the government in pursuance of gift deed dated 6.3.1997. Manmohan Kaur – petitioner No.2 was appointed as JBT teacher at SHS Khalsa School, Jian Chhabewal on 22.3.1976. The said

school was also a government aided privately managed school before it was taken over by the government in pursuance of gift deed dated 10.8.2000. The petitioners from the date of their respective appointments had been depositing their contributory provident fund. The government gave grant for the salary of Davinder Pal – petitioner No.1 to the school from 15.7.1981 till it was taken over on 6.3.1997. Similarly, grant was also given by the government to the school where Manmohan Kaur – petitioner No.2 was serving from 7.5.1976 till it was taken over on 10.8.2000.

In both the petitions under Articles 226/227 of the Constitution of India, the petitioners claim pension by taking into account the service rendered by them in government aided privately managed institutions for which service, they would in any case be entitled to pension in accordance with the Scheme formulated by the Punjab government known as the Punjab Privately Managed Recognised Aided Schools Recruitment Benefits Scheme, 1992 (1992 Scheme – for short). The same was made effective from 1987. In terms of the said 1992 Scheme, the government took a decision that employees of government aided schools would be given pension in lieu of the contributory provident fund. The teachers working in the respective privately managed recognized aided schools were asked to give their options as to whether they would like to continue in the existing contributory provident fund scheme or opt for the retirement benefits admissible under the 1992 Scheme. Petitioner – Harnandan Singh in CWP 11010 of 2005 on 12.6.1992 deposited his share of the contributory provident fund in the government treasury in lieu of pension. Similarly, petitioners – Davinder Pal and Manmohan Kaur in CWP 11035 of 2005 gave their necessary options and undertaking on 8.6.1992 and 29.5.1992 respectively. The schools in which the respective petitioners in these writ

petitions were working, were thereafter taken over by the government by separate gift deeds.

Bharat High School, Tuto Majra, District Hoshiarpur in which petitioner Harnandan Singh in CWP 11010 of 2005 and Smt Devinder Pal – petitioner No.1 in CWP 11035 of 2005 were working, was taken over by the government vide gift deed dated 6.3.1997. It was mentioned in the gift deed that the government is not under any obligation to take in its control the establishment of the school. However, the government would have the discretion to take those employees who fulfil the necessary qualifications under its control. It is further provided that the staff members who fulfil the above conditions would be absorbed in government service which would be considered as a fresh appointment and their seniority fixed according to rules below the last employee. The SHS Khalsa Senior Secondary School, Jian Chhabewal was taken over by the government by gift deed dated 10.8.2000. In the gift deed dated 10.8.2000 executed between the Punjab government and SHS Khalsa High School, it was inter alia provided that the government is under no obligation to take over the establishment of the school. However, the government would have the discretion to take those employees who fulfil the necessary qualifications under its control. It is further provided that the staff members who fulfil the conditions as contained therein would be absorbed in government service which would be considered as a fresh appointment and their seniority fixed according to rules below the last employee.

Replies have been filed by the respondents in both the cases. The material aspects as regards the service rendered by the respective petitioners have not been disputed. In the written statement filed in response to CWP 11010 of 2005, petitioner – Harnandan Singh, it is stated, is not entitled to the grant of pensionary benefits. Bharat High School, Tuto

Majra, it is stated, was taken over by the government vide memo dated 10.11.1997 and petitioner – Harnandan Singh along with other staff was treated as a fresh appointee in the government. In terms of the conditions of the said memo dated 10.11.1997, the staff members to be taken over were treated as fresh entrants in the government service and no benefits whatsoever of the previous service was to be given except pay fixation. In terms of letter dated 20.1.1997 in respect of Bharat High School, Tuto Majra, the school was to be taken over from the date on which the Director Public Instructions (Schools) would issue order for taking over the school. The position with respect to petitioner – Davinder Pal in CWP 11035 of 2005 is similar to the case of petitioner – Harnandan Singh in CWP 11010 of 2005 who was also a teacher in Bharat High School, Tuto Majra.

The SHS Khalsa Senior Secondary School, Jian Chhabewal, it is stated, was taken over by the Punjab government vide memo dated 2.8.2000. In terms of the said letter, the staff was taken over with the condition that they would be treated as fresh entrants in the government service.

In both the cases, strong reliance is placed on the judgment of the Suprme Court in ***State of Punjab v. Dev Dutt Kaushal*** AIR 1996 SC 85 to contend that the period rendered in the privately managed aided school is not to be counted towards pension. Therefore, the writ petitions merit dismissal.

We have heard learned counsel for the parties.

Learned counsel for the petitioners submits that the period of service rendered by the petitioners in the privately managed government aided institutions is liable to be counted towards pension as had the petitioners continued in the management of the private aided schools, they would in any case be entitled to pension in accordance with the 1992

Scheme. Therefore, the service rendered in the privately managed aided schools cannot be washed away.

In response, learned Senior DAG Punjab has opposed the grant of pensionary benefits and has contended that the letters provided for taking over the institutions envisage that the previous service rendered by the petitioners is not to be counted towards pensionary benefits. Therefore, their claim has been rightly declined.

We have given our thoughtful consideration to the matter.

The fact that the petitioners have rendered service in privately managed aided institutions, is not in dispute. Harnandan Singh – petitioner in CWP 11010 of 2005 was appointed as Master on 25.2.1972 at Bharat High School, Tuto Majra. He was promoted to the post of Headmaster on 12.3.1992 w.e.f. 1.10.1992. Smt Devinder Pal – petitioner No.1 in CWP 11035 of 2005 was appointed as Hindi teacher in the aforesaid Bharat High School, Tuto Majra on 13.5.1974. Manmohan Kaur – petitioner No.2 in CWP 11035 of 2005 was appointed as JBT teacher on 22.3.1976 in the SHS Khalsa School, Jian Chabbewal. The Schools in which the petitioners were appointed, were government aided privately managed schools. The petitioners, had, in both the petitions, from the date of their respective appointments, been continuously depositing Contributory Provident Fund. Bharat High School, Tuto Majra was taken over by the government in pursuance of gift deed dated 6.3.1997 and the SHS Khalsa School, Jian Chabbewal, was taken over vide gift deed dated 10.8.2000. Both the gift deeds contain recital to the effect that government is under no obligation to take over the establishment of the school. However, the government would have the discretion to take those employees who fulfil the necessary qualifications under its control. It is further provided that the staff members who fulfil the conditions as contained in the gift deeds would be absorbed

in government service which would be considered as a fresh appointment and their seniority fixed according to rules below the last employee. The stand of the petitioners is that had the schools not been taken over, they would be governed by the 1992 Scheme which has retrospective effect and had come into force w.e.f. 1987. It is not in dispute that in terms of the said Scheme, the Punjab Government decided to grant pensionary benefits like pension and gratuity, in lieu of Contributory Provident Fund to the teachers of the privately managed aided schools in the State of Punjab. The aforesaid 1992 Scheme was thus applicable to the teaching employees working against the aided posts. Had the school where the petitioners were working not been taken over by the government, the petitioners would be entitled for the grant of pension, in view of the said 1992 Scheme. Clause 3 of the 1992 Scheme provides for the application of the Scheme and Clause 5 provides for the benefits under the Scheme. Clauses 3 and 5 read as under:-

> "3(1) Application: This scheme shall apply to all the employees, excepting those who do not opt in terms of clause 3 (subject to the condition that the Managing Committee of a Privately Managed Recognised Aided School executes an agreement in Form-1 duly supported by a resolution of the Managing Committee to abide by the provisions of this Scheme and instructions, issued by the Department from time to time), who –
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> (a) are appointed to the aided posts on or after the fifth day of February, 1987; and
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> (b) were working on aided posts immediately before the fifth day of February, 1987 and continue to work as such after that date;

Provided that the employees who were appointed to the aided posts;

(i) before the fifth day of February, 1987 and who have attained or will attain the age of superannuation on or after that date; and

(ii) on or after the fifth day of February, 1987 but before the 16th day of January 1991;

shall have the right to opt within a period of four months from the date of publication of this scheme to be or not to be governed by the provisions of the scheme.

(2) The scheme shall not apply to –

(i) the employees appointed on part time basis against posts;

(ii) the employees who retired from the aided posts before the 5th day of February, 1987 and the employees who attained the age of superannuation before the fifth day of February 1987 and were re-employed on aided posts;

(iii) the employees who are governed by the Contributory Provident Fund; and

(iv) the employees employed on a leave gap arrangement on ad hoc basis.

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5. **Benefits under the Scheme**: The following retirement benefits shall be granted under the Scheme, namely:

a) Superannuation pension;

b) Death-cum-retirement gratuity;

c) Family pension;

d) Invalid pension;

e) Compensation pension;

f) Compassionate allowance; and

g) Retiring pension."

The petitioners admittedly comply with the conditions provided for the application of the 1992 Scheme. Therefore, assuming that if the school of the petitioners where they had been working had not been taken over by the State Government in terms of the gift deeds dated 6.3.1997 and 10.8.2000, they would still have got the benefits of the 1992 Scheme. In Dev Dutt Kaushal's case (supra), on which strong reliance has been placed by the respondents, it was held that in terms of the gift deed executed in the said case by the management of the College, it was inter alia provided that the services rendered in the College under private management will not be counted for pension. Admittedly, there is no such specific stipulation with regard to not counting the period of service rendered in the privately managed aided institution towards pension. Besides, in Dev Dutt Kaushal's case (supra) a reference was also made to the 1992 Scheme whereby the teachers in the privately aided schools would be entitled for the grant of pension. It was observed that if any of the respondents in the appeals before the Supreme was entitled to any benefit under the said 1992 Scheme, he would be entitled to claim the same according to law.

As already noticed, the petitioners have been in service of the privately managed aided schools since the dates of their initial respective appointments till the schools were taken over on 6.3.1997 and 10.8.2000. At this stage, to say that the said period of service from the date of their respective appointments to the dates the schools were taken over by the government has been completely washed away for the purpose of pension, would amount to grave injustice. The petitioners admittedly comply with all the necessary requirements under the 1992 Scheme and had their school

not been taken over, they, in any case, would have been entitled for pension in terms thereof. The petitioners had during their service also exercised their necessary options for the 1992 Scheme. Therefore, it cannot be said that they would not be entitled for pension in view of the letter dated 31.8.2000 with respect to SHS Khalsa School, Jian Chabbewal and letter dated 20.1.1997 with respect to Bharat High School, Tuto Majra, issued by the respondents. The stand of the respondents being contrary and against the spirit of 1992 Scheme, is unsustainable in law. Moreover, Dev Dutt Kaushal's case (supra) specifically noticed that if any of the respondents in the appeals before the Supreme Court was entitled to the benefit of the 1992 Scheme he would be entitled to the same according to law. It has not been shown by the respondents, that the respective petitioners are not entitled to the benefit of 1992 Scheme especially when the petitioners have shown that they had exercised the necessary option for the 1992 Scheme and had also deposited their necessary Contributory Provident Fund. Consequently, the orders (Annexure P10) regarding pension case of Smt Devinder Pal @ Devinder Kaur – petitioner No.1 and Annexure P11 in respect of Smt Manmohan Kaur – petitioner No.2 in CWP 11035 of 2005 are unsustainable in law and are liable to be quashed.

For the fore going reasons, both the writ petitions are allowed; the impugned orders Annexures P10 and P11 in CWP 11035 of 2005 whereby the pension has been declined to the petitioners, are quashed and it is directed that the respondents shall grant the petitioners the pension admissible to them including arrears of pension in accordance with law. However, their claim for interest on the arrears in the peculiar facts and circumstances of the case is declined. The respondents shall re-calculate the pension and pay the same to the petitioners preferably within three months

of the receipt of certified copy of this order. There shall be no order as to costs.

(S.S.NIJJAR)
JUDGE

3.8.2006. (S.S.SARON)
ASR JUDGE

WHETHER FIT FOR INDEXING : YES/NO.